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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, ) CIVIL NO. CV07-00172 SOM LEK  
                  ) (Copyright)  
Plaintiff,      ) ) **DECLARATION OF RAINA P.B.**  
v.                ) ) **GUSHIKEN RE: PARTIES'**  
DEUTSCHE BANK TRUST ) ) **POSITIONS ON THEIR**  
COMPANY AMERICAS (FKA ) ) **RESPECTIVE RULE 56(f)**  
BANKERS TRUST COMPANY) ) **REQUESTS; CERTIFICATE OF**  
AND JP MORGAN CHASE BANK ) ) **SERVICE**  
IN THEIR SEPARATE CAPACITIES )  
AND AS AGENTS FOR THE PRE )  
AND POST- PETITION LENDERS )  
OF FLEMING COMPANIES, INC.; )  
DOES 1 TO 200,         ) )  
                      ) )  
Defendants.        ) )  
                      ) )  
                      ) )

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**DECLARATION OF RAINA P.B. GUSHIKEN RE:**  
**PARTIES' POSITIONS ON THEIR RESPECTIVE RULE 56(f) REQUESTS**

I, RAINA P.B. GUSHIKEN, under penalty of perjury state as follows:

1. I am an attorney licensed to practice law before all of the State and Federal Courts in the State of Hawaii and am one of the attorneys representing the DEUTSCHE BANK TRUST COMPANY AMERICAS (FKA BANKERS TRUST COMPANY) and JP MORGAN CHASE BANK in their separate

capacities and as agents for the pre and post-petition lenders of Fleming Companies, Inc. (collectively "Defendants") in this case.

2. As requested by the Court, on July 18, 2007, I telephoned Plaintiff's counsel, Timothy Hogan, to discuss the parties' positions on their respective Rule 56(f) requests for continuances.

3. As indicated to me by Mr. Hogan, Plaintiff's position is that the Court should deny Defendants' Motion to Dismiss and rule on his Counter Motion for Partial Summary Judgment on July 23, 2007 without a continuance. Plaintiff would not withdraw his Rule 56(f) request, however. Plaintiff also believes that Defendants' 56(f) request to continue Plaintiff's Counter Motion for Partial Summary Judgment is untimely and should have been filed as part of Defendants' opposition to the same.

4. Defendants' position is that the Court can resolve the Defendants' pending Motion to Dismiss without the need for a continuance. A favorable ruling would moot the Plaintiff's Counter Motion for Partial Summary Judgment. A second hearing on the summary judgment motion could be scheduled for a later date allowing for the limited discovery requested in Defendants' Rule 56(f) request. In the event the Court believes that it would be more convenient or efficient to have both motions heard at the same time, a short continuance should

be granted along with an order directing Plaintiff to comply with the limited discovery requests served by Defendants and to promptly serve on Defendants specific discovery narrowly tailored in conformance with Rule 56(f). To date, Plaintiff has not specified the discovery he seeks under Rule 56(f).

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, July 19, 2007

/s/ Raina P.B. Gushiken  
RAINNA P.B. GUSHIKEN